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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/053,142      | 11/07/2001  | Robert L. Smith      | V-3280-010          | 4757             |

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EXAMINER

KEENAN, JAMES W

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 11/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                  |
|------------------------------|-----------------|------------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)     |
|                              | 10/053,142      | SMITH, ROBERT L. |
| Examiner                     | Art Unit        |                  |
| James Keenan                 | 3652            |                  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 September 2003.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2 and 4-11 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2 and 4-11 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)                  4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                  5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .                  6) Other: \_\_\_\_\_ .

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1. Claim 10 is objected to because of the following informalities: line 2, "al" should be --at--. Appropriate correction is required.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 10-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of "said ... two support guides" lacks antecedent basis; note claim 4.

In claim 11, the recitation of plural "horizontal planes" lacks antecedent basis.

4. Claims 1-2, 4-5, and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monroig, Jr. in view of Pihlgren, both previously cited.

Monroig, Jr. shows a cargo loading and unloading device including guide assembly 16 mounted proximal an open end of vehicle bed 14 and comprising connector guide 26 and support guides comprised at least partially of rollers 90 attached to a frame 74, 76, 78, wherein the frame includes longitudinal beam 78 extending at a right angle to the longitudinal axis of the vehicle bed, the device further including carriage 20 for holding cargo, connector 24, and winch 22 which is

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considered to be at least indirectly "attachable to the vehicle", as broadly claimed, wherein a first end of the connector is attached to the winch and a second end is attached to the carriage.

Monroig, Jr. does not show the support guides 90 attached to the beam, although they are attached to frame members 74 proximate the beam and have an axis of rotation parallel thereto.

Pihlgren shows a similar invention, including guide assembly 40 with a frame comprising longitudinal beam 41 extending at a right angle to the longitudinal axis of the vehicle bed, support guides 49 attached to the beam, carriage 51, connector 38, winch 36, and a connector guide 60.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Monroig, Jr. by attaching the support guides directly to the beam, as shown by Pihlgren, as this would simply be an art recognized design expediency which would neither require undue experimentation nor produce unexpected results.

5. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monroig, Jr. in view of Pihlgren, as applied to claim 1 above, and further in view of Goss et al, previously cited.

The modified apparatus of Monroig, Jr. does not show the guide assembly to comprise retaining guides having the features as claimed.

Goss et al show a cargo loading and unloading device wherein rollers 32 (retaining guides) have first ends spaced farther apart from each other than are second ends thereof, which in turn are spaced apart a distance equal to or greater than the width of the cargo.

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It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Monroig, Jr. with retaining guides having the features of Goss et al as described, as this would preclude the complexity of interfitted rollers and rails and allow loading and unloading of different sized cargo carriers.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Monroig, Jr. in view of Pihlgren, as applied to claim 1 above, and further in view of Whiting, previously cited.

The modified apparatus of Monroig, Jr. does not show the guide assembly connected to a trailer hitch of the vehicle.

Whiting shows a cargo loading apparatus wherein a carrier 1 can be attached to a truck bumper (fig. 1), bed (fig. 7), or trailer hitch (fig. 11).

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Monroig, Jr. by attaching the guide assembly to a trailer hitch instead of the truck bed, as Whiting explicitly teaches this as an alternate equivalent.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Monroig, Jr. in view of Pihlgren and Whiting, as applied to claim 8 above, and further in view of Abbott, previously cited.

The further modified apparatus of Monroig, Jr. does not show the means for attachment of the guide assembly to the trailer hitch to have the features as claimed.

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Abbott shows an attachment means for a trailer hitch rack which allows the hitch to be used for its intended purpose (towing), including a peg 32 which extends down to be received in a hollow tube 24 extending upward from a drawbar of the hitch.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have yet further modified the apparatus of Monroig, Jr. by utilizing a peg received in a tube as the means of attaching the guide assembly to the hitch, as suggested by Abbott, as this would allow the truck to be used for towing even when loaded with cargo.

8. Applicant's arguments with respect to claims 1-2 and 4-11 have been considered but are moot in view of the new ground(s) of rejection.

It is noted that although applicant has overcome the rejection under 35 U.S.C. 102, it is for the reasons noted above in paragraph 4, not because Monroig, Jr. fails to show a beam or support guides, as argued by applicant.

It is also noted regarding applicants arguments concerning claim 8 that it is the teaching reference Whiting, not the base reference, which suggests the obviousness of making the combination.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is (703) 308-2559.

The fax phone number for the organization where this application or proceeding is assigned is 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1113.

jwk  
November 4, 2003

  
JAMES W. KEENAN  
PRIMARY EXAMINER